IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE A.K.BASHEER

MONDAY, THE 19TH FEBRUARY 2007 / 30TH MAGHA 1928

Crl.MC.No. 2957 of 2004()

CC.2313/2002 of JUDL.MAGISTRATE OF FIRST CLASS-I, ALUVA

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PETITIONER/ACCUSED:

MADHU S/O.GOPINATHAN, KALAUBLAIYIL VEEDU
KUNJATTUKARA KARA, ALUVA, EAST VILLAGE.

BY ADV. SRI.RAJESH VIJAYAN

RESPONDENT/COMPLAINANT:

STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
EERNAKULAM.

BY PUBLIC PROSECUTOR SRI. S. DILEEP

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 19/02/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

A.K. BASHEER, J.

CRL.M.C. NO. 2957 OF 2004

Dated this the 19th day of February, 2007

O R D E R

Petitioner and six others were charge sheeted by Chengamanadu Police in Crime No.88/1997 for offences punishable under Section 143, 147, 148, 448, 323 and 324 read with Section 149 I.P.C. Petitioner was arraigned as accused No.2 in the above crime. Police had laid the charge sheet after completing the investigation and the case was taken on file before the Judicial Magistrate of First Class Court I, Aluva as C.C. No.537/98. When the case came up for trial, petitioner and accused No.6 were absent as they were reportedly absconding. Therefore, the case against the petitioner and accused No.6 was split up, which is now stated to be pending in C.C. No.2313/2002.

In C.C. No.537/98 the prosecution had examined PW1 and PW2. PW1 deposed before the court that he knew nothing about the alleged incident. PW2, who was stated to be an occurrence witness, also did not support the prosecution case. Certified copies of the depositions of PWs 1 & 2 are on record as Annexure A4(a) and A4(b) respectively. The remaining witnesses were not produced by the

prosecution before the court. It was noticed by the learned Magistrate that CWs 1,2 and 5 did not appear before the court despite coercive steps taken against them. Warrants of arrest had been repeated against those witnesses on eight occasions. But, still the prosecution could not produce those witnesses for examination. In the above circumstance the prosecution had given up the remaining witnesses and the evidence was closed. The learned Magistrate was thus constrained to acquit the accused in the case. A copy of the judgment has been produced as Annexure A3.

Having carefully perused the judgment and depositions of the two witnesses (PW1 and PW2) mentioned above, I am satisfied that it will be an exercise in futility, if the petitioner is asked to face trial in the same case and that too, at this distance of time. It will be sheer waste of the valuable time of the court if the petitioner is asked to face trial.

In the above circumstances, the proceedings pending against the petitioner in C.C. No.2313/02 on the file of the Judicial Magistrate of First Class Court I, Aluva are quashed. Crl. M.C. is allowed.

A.K. BASHEER, JUDGE

vps

KURIAN JOSEPH, JUDGE

OP NO.

JUDGMENT

21st DECEMBER, 2006